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Summary record of the 3236th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 8 March 2016, at 3 p.m.

Chair: Mr. Salvioli

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Second periodic report of Namibia (CCPR/C/NAM/2; CCPR/C/NAM/Q/2 and Add.1)

1. *At the invitation of the Chair, the delegation of Namibia took places at the Committee table.*

2. **Mr. Kawana** (Namibia), introducing the second periodic report of Namibia (CCPR/C/NAM/2), said that prolonged drought and economic constraints had hampered the Government's efforts to fully implement the Covenant in recent years. However, it had adopted various policies and programmes aimed at upholding civil and political rights and had increased the budget of the Office of the Ombudsman to enable it to investigate human rights violations. Steps had also been taken to tackle unemployment and poverty, including through the establishment of the Ministry of Poverty Eradication and Social Welfare, the provision of social assistance grants for vulnerable groups and the adoption of standards on working conditions for domestic workers. Discussions were also under way on the introduction of a national minimum wage. As to the absence of specific legislation prohibiting acts of torture, the Law Reform and Development Commission had recently drafted a bill that explicitly defined torture as a criminal offence in its own right; that bill was due to be submitted to Parliament by the end of 2016.

3. The Government had adopted the Child Care and Protection Act, which covered areas such as juvenile justice, adoption and the protection of children from harmful cultural practices, and it had appointed the first Children's Advocate within the Office of the Ombudsman. It had also established free primary and secondary education for all school-age children. The abuse and ill-treatment of women and children remained a serious concern despite the introduction of legislation to combat domestic and gender-based violence. The Government continued to work with NGOs and other stakeholders to improve the support services available to victims of such violence and to raise the general public's awareness of the rights of women and children. Efforts had also been made to strengthen the provisions of the Combating of Domestic Violence Act and the National Gender Policy.

4. The Government had launched a refugee integration policy to facilitate the integration of Angolan refugees into Namibian society and was working closely with the Regional Office of the United Nations High Commissioner for Refugees in South Africa to support persons seeking asylum.

5. **Mr. Seetulsingh**, in reference to the first question in the list of issues, said that he would like further clarification regarding the status of the Covenant in the domestic legal order. The Committee remained concerned about the possibility that an Act of Parliament could invalidate international obligations assumed by the State party. He also wished to know whether steps had been taken to establish a mechanism for implementing the Views adopted by the Committee under the Optional Protocol and for giving effect to the Committee's Views (communication No. 919/2000) on the case of *Müller and Engelhard v. Namibia*. Did the State party's responses in paragraphs 7 and 8 of its replies to the list of issues (CCPR/C/NAM/Q/2/Add.1) mean that, if the Committee found in favour of a complainant, that person would have to enter a fresh case before the Namibian courts in order to enforce his or her rights under article 25 (2) of the Constitution? Updated information on the status of the proposed amendments to the Ombudsman Act would also be appreciated. Concerning discrimination on the grounds of disability, he would like to know what measures had been taken to facilitate access for persons with disabilities to the

open labour market and to ensure that companies complied with their affirmative action obligations pursuant to section 106 of the Labour Act. Information on whether specific policies had been introduced to inform persons with disabilities of their rights and protect them from discrimination would also be welcome.

6. **Mr. Bouzid** asked what steps had been taken to implement gender equality legislation and combat gender-based discrimination. He also wished to know what programmes had been established to counter the stigmatization of persons with HIV/AIDS, particularly women, to combat discrimination against them and to provide equal access to appropriate medical treatment and counselling. Information on efforts to eradicate the practice of forced sterilization of women with HIV/AIDS and to obtain informed, prior consent in the case of voluntary sterilizations would also be appreciated. Regarding the lesbian, gay, bisexual, transgender and intersex community, he asked what steps had been taken to prevent discrimination and human rights violations based on sexual orientation and to ensure that such offences were investigated and duly prosecuted.

7. Lastly, he would appreciate further information about the status of the bill on the crime of torture and the reasons for the delay in its adoption. Would the delegation please comment on reports that some police officers used excessive force and allegations that they regularly detained sex workers and coerced them into having sex before their release? Further information on the measures taken to prosecute police officers found guilty of torture or rape, along with specific examples, would also be useful. Information on the steps taken to ensure the independence of the police force would be welcome.

8. **Ms. Pazartzis**, referring to paragraph 4 of the list of issues, said that, while the Committee welcomed the adoption of the National Human Rights Action Plan, it would be interested to hear more about concrete legislative reforms. Concerns had been raised by civil society about the continuing lack of a system for recording customary marriages, the prevalence of polygamy and the existence of discriminatory grounds and procedures for customary divorce, and she would therefore appreciate details on the status of the Bill on Recognition of Customary Law Marriages. When was it expected to come into force? Pending the enactment of that law, what specific measures had been taken to promote the registration of customary marriages and eliminate the discrimination faced by women married under customary law? How was the implementation of section 26 (2) of the Communal Land Reform Act monitored? She was particularly interested in receiving such information in the light of reports of the continuation of the traditional practice whereby family members confiscated the property of deceased men from their widows and children. She would like to know whether the State party had any intention of reviewing Native Administration Proclamation 15, which dealt with marriage and inheritance matters under customary law and provided for differentiated treatment of such matters on the basis of race, and would welcome the delegation's comments on the fact that race-based practices continued to apply despite the adoption of the Estates and Succession Amendment Act in 2005. What was the status of the bill on intestate succession, under which the same rules would apply to persons of all races?

9. Turning to paragraph 5 of the list of issues, she wished to know whether the State party was aware of cases in which children born out of wedlock were denied their inheritance, despite the existence of legislative provisions guaranteeing them equal rights in such matters. Were such cases reported and, if so, how common were they? When was the Child Care and Protection Act of 2015 expected to come into force?

10. **Sir Nigel Rodley**, noting that the Committee traditionally encouraged States parties to find remedies for possible human rights violations at the regional as well as national level and thus considered it a step backwards when a potential remedy was terminated, asked the delegation to comment on why Namibia had gone along with the decision to dissolve the Southern African Development Community (SADC) Tribunal. Referring to the

reply to paragraph 7 of the list of issues on access to abortion (CCPR/C/NAM/Q/2/Add.1), he requested clarification of the provision that one of the circumstances in which abortion would be allowed was if "the foetus had been conceived in consequence of illegitimate carnal intercourse and the woman was, owing to a permanent mental handicap or defect, unable to comprehend the implications of or bear the parental responsibility for the 'fruit of coitus'". Was it true that judges refused to authorize the termination of pregnancies resulting from unlawful intercourse? He wondered whether the fact that two doctors, in addition to the woman's doctor, had to certify the existence of grounds for an abortion and that judicial authorization was also required could cause undue delays in the performance of abortions, bearing in mind that terminations were not performed after the first trimester. It seemed that procedures for accessing abortion services were so cumbersome that those services were virtually unavailable. He invited the delegation to comment on the practice of "baby dumping" — in other words, the abandonment of newborn babies — and on its possible linkage to the difficulty of obtaining a lawful termination. He would like to know whether the State party might consider reviewing its legislation on abortion. What measures were being taken to provide support to young and/or single mothers and protect them from stigmatization? Did young people have access to contraceptives?

11. Noting that, in its written replies to paragraph 12 of the list of issues, the State party had asserted that most of the alleged harmful practices against women and girls cited by the Committee were not practised in Namibia and that the remainder were not harmful, he invited the delegation to comment on reports by United Nations agencies and reputable NGOs, as well as statements made in a publication by the Ministry of Gender Equality and Child Welfare, which indicated that such practices continued to be carried out in some parts of the country. He would welcome details on the research findings mentioned in the country's replies which indicated that female genital mutilation was traditionally not practised in Namibia. He would be interested to know what measures were taken to investigate allegations of rape, what monitoring strategies were in place to improve police investigations of cases of gender-based violence, how the Gender Protection Unit had been strengthened, and how the strategies and activities called for under the national plan of action on gender-based violence had been implemented. The Committee would be grateful for statistics on sentencing in rape cases and on the number of cases in which remedies had been awarded to employees who left their jobs owing to sexual harassment.

12. **Ms. Cleveland**, referring to paragraph 10 of the list of issues, asked what statistics the State party collected that had a bearing on the issue of gender balance and on the gender wage gap in both the public and private sectors. What steps were being taken to eliminate the wage gap? She would like to know whether the authorities had looked into the situation, as the country had announced that they would in response to a 2013 UN-Women study indicating that the wage gap amounted to at least 16 per cent. If so, what had that inquiry disclosed and what further action would be taken? She would appreciate information on the action taken in response to the 2015 recommendations of the Committee on the Elimination of Discrimination against Women regarding the removal of structural inequalities, the elimination of occupational segregation and increased representation of women in managerial positions in the private sector. Noting that the fact that there had been no court cases involving gender-based discrimination did not mean that there was not a problem but rather that women might lack sufficient access to information or the means to bring cases to court, she asked what efforts had been made to educate the general public about the problem of gender discrimination in employment and to establish and publicize complaint mechanisms and provide legal aid to women.

13. With regard to paragraph 11 of the list of issues, she would be interested to know what steps had been taken to implement the recommendations of the 2014 National Conference on Gender-Based Violence, which had included measures for improving the procedures for reporting cases at police stations in order to make them victim-friendly and

discourage the withdrawal of cases. Information would be welcome on the State party's plans to expand access to the special units that were in place to protect people from gender-based violence and to ensure that they were properly resourced, as well as on the number of shelters nationwide and their capacity. Were national budget resources specifically earmarked for those services? What steps had been taken to make it easier for women to obtain protection orders in rural areas and elsewhere? She wished to know whether steps had been taken to authorize persons other than magistrates to issue such orders, to arrange for the submission of applications for protection orders at times when the courts were closed and to make such orders available for persons exposed to abuse in same-sex relationships. The non-enforcement of protection orders was a cause of concern, as was the practice of granting bail to persons who had committed repeated acts of domestic violence, including rape. Information would therefore be welcome on the guidelines for granting bail to perpetrators of domestic violence and the measures in place to protect women when violations of protection orders were reported. She would be interested to hear more about the content of the training provided to law enforcement officials, judges and prosecutors on how to handle incidents involving gender-based violence and to learn how many individuals had been trained to date. What efforts were being made to educate society at large, especially men and boys, about domestic and gender-based violence? She invited the delegation to comment on reports that 542 cases of domestic violence had been reported between February 2012 and February 2013, including 30 cases of attempted murder and 24 cases of murder. She wished to know whether the cases of domestic violence resulting in murder or attempted murder had been investigated and, if so, how many of those investigations had led to prosecutions and convictions. What steps were being taken to address the large gap between the number of rape cases reported and those that were ultimately prosecuted? She would welcome clarification on the law under which mitigating circumstances for violent crimes were established, on the measures being taken to ensure that women were not hindered from leaving abusive marriages by the obligation to repay their bride price, or *lobola*, and on efforts to address the increase in the number of passion killings.

14. **Mr. de Frouville** said that he would appreciate updated information on the results of the investigations into reports of mass graves containing the remains of persons killed by security forces between 1994 and 2003. With regard to allegations that members of the South-West African People's Organization had been subjected to torture and enforced disappearance during the war of independence, he wished to know how justice was being served and what reparation was being provided to the victims.

The meeting was suspended at 4.30 p.m. and resumed at 4.55 p.m.

15. **Mr. Ndjoze** (Namibia) said that the Covenant had become part of Namibian law upon its ratification and that no Act of Parliament that renounced any of the State's obligations under the Covenant could be enacted. The Covenant still needed to be promulgated in the official gazette, however. Those of the provisions of the Covenant that were not self-executing must be incorporated into national legislation before they could be implemented. The Government was aware of suggestions made by the Ombudsman as to how the Office of the Ombudsman might be brought into line with the Paris Principles, but it had not yet received a concrete proposal in that regard. The Government supported some of those suggestions, such as the one regarding the extension of the Ombudsman's mandate to cover economic, social and cultural rights. With regard to control over the budget and the recruitment of staff, the Office of the Ombudsman did have its own budget as a subdivision of the Ministry of Justice. As was the case for all government bodies, allocations from the national budget were subject to the availability of resources.

16. **Mr. Kawana** (Namibia) said that, in the light of the drought that had been affecting the country for the past three years, it had been necessary to revise the budget in order to

devote more resources to farm subsidies. Replies to the questions about persons with disabilities would be submitted in writing.

17. **Ms. Böhlke-Möller** (Namibia) said that discrimination on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status was prohibited under article 10 of the Constitution. One of the main focuses of the National Human Rights Action Plan was the right not to be discriminated against. Consultative workshops had been held to identify the vulnerable groups that were most likely to suffer discrimination, which included persons with disabilities, women and lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. The objectives of the Plan were, inter alia, to gather information on the extent to which the rights of persons with disabilities, indigenous peoples, women and LGBTI persons were infringed upon; to intensify education and awareness-raising efforts; and to implement legal and regulatory reforms that would give effect to the non-discriminatory provisions of various international and regional instruments. New legislation would be developed to prohibit discrimination on grounds of albinism, gender and disability and to classify racial name-calling as a form of hate speech.

18. The Law Reform and Development Commission was currently working on legislation to protect persons with disabilities. LGBTI persons were not being victimized because of their sexual orientation. Pursuant to the right to privacy enshrined in the Constitution, they could do what they wished in the privacy of their own homes. They were not asked to disclose their sexual orientation on any official forms, nor could they be refused access to services on the basis of their sexual orientation. Same-sex marriage was not, however, recognized under Namibian law. The Supreme Court had interpreted article 14 of the Constitution to mean that marriage referred only to a union between a man and a woman. Her delegation took note of the recommendation to repeal the "anti-sodomy" law.

19. The Affirmative Action Act provided for measures to create equal opportunities for women in employment. Currently, 40 per cent of managerial positions were held by women, 60 per cent of all employees were women, and 50 per cent of professional employees were women. Racial discrimination was a criminal offence under Namibian law, and there was absolutely no legal or political support for any scheme that would condone the domination of one race, tribe or group over another. Since its independence, Namibia had consistently followed a policy of national reconciliation.

20. **Mr. Kawana** (Namibia) said that the Married Persons Equality Act established equal property rights for men and women. Any discrimination against women in that regard was therefore unlawful. The only instance in which persons living with HIV were treated differently from others was in the armed forces. While such persons could be recruited into the armed forces, they could not take up physically demanding duties that might cause their health to deteriorate.

21. There were some cases in which the courts had ruled that persons who believed that they had been subjected to forced sterilization were entitled to compensation. However, while those persons had not been given adequate information at the time that they had undergone that procedure, the sterilization had not taken place under duress. Current sterilization practices were fully in line with international standards, and the persons concerned were properly informed about the procedure beforehand.

22. A new bill on torture would be submitted to Parliament some time in 2016, once the debates on the budget were completed. The definition of torture contained in that bill was the same as the one set forth in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

23. The Law Reform and Development Commission was currently considering the issue of customary marriage as part of what was known as the Family Law Project. The Committee members' concerns would thus be addressed in the forthcoming bill. The

tradition of paying *lobola* was comparable to the Western tradition of buying an engagement ring and was a way for a man to express his love for a woman. While the Government had no intention of abolishing the practice, one option would be to prohibit any demands for repayment of *lobola* in cases where a marriage had irretrievably broken down. Along the same lines, while it was not feasible to abolish polygamy, it would be possible to pass regulations on the rights and obligations of husbands and wives in polygamous marriages. The courts had ruled that certain provisions of the Native Administration Proclamation of 1928 relating to civil marriages and community of property were discriminatory. Those provisions would thus be repealed, and the Law Reform and Development Commission was currently working on a bill to that effect.

24. Campaigns were currently under way to raise awareness about domestic violence, and those campaigns were being led largely by men. Awareness-raising sessions were being held with traditional leaders, governors, chairpersons of regional councils and other prominent community members, as well as with male students and male office employees.

25. The issue of the inheritance rights of children born outside wedlock had been addressed in legislation that had been passed in 2006, and all children in Namibia currently had equal access to care and equal inheritance rights. Under the 2003 Maintenance Act, parents had a legal duty to support their children regardless of whether they had been born inside or outside marriage. If a parent failed to fulfil his or her obligations in that regard, a judge could issue an order obliging employers to withhold a portion of that parent's salary which, via the courts, would then be paid to the person with physical custody of the child.

26. The prerogatives of the SADC Tribunal had been questioned by member States, and the Tribunal was now in the process of being reconstituted with a new mandate. Namibia had been one of the first countries to sign the protocol on the new Tribunal and was currently waiting for other SADC member States to follow suit.

27. Abortion was a contentious issue due to prevailing cultural, traditional and religious beliefs. During the 1990s, an attempt by the Government to legalize abortion on demand had ended in failure when the country's Christian churches had mobilized their congregations against it. The issue was now once again on the agenda, and it was likely that the Cabinet would approve a proposal for a national referendum on a law to legalize abortion on demand. Namibia had taken measures to address the problem of child abandonment, or, as it was sometimes called, "baby dumping". The Government had made it known that it was ready to step in and look after unwanted children, and mechanisms and agencies had been set up to accommodate them. The implementing regulations for the 2015 Child Care Protection Act would be approved very shortly, and at that time the Act, which also covered national and international adoption, would come into force. Contraception was currently available free of charge in all State health institutions. Youth centres staffed by young people also distributed contraceptives, particularly in rural areas.

28. A study had been carried out on harmful practices affecting women and girls, including female genital mutilation, although it was not widely practised in Namibia. Some cultural practices had recently been revived in a modified form, including one in which girls who had their first menstrual cycle would go on a retreat with older women and be given advice on avoiding unwanted pregnancies and other family planning issues. The revival of the practice known as *olufuko* had become extremely popular and, although it had met with resistance from some quarters, it was conducted with good intentions and participation was voluntary and free of charge. In the areas where it was practised, pregnancy rates among girls had dropped dramatically. Schoolgirls who did get pregnant were not expelled but could resume their schooling after giving birth. Namibia placed great importance on education and was one of the few countries in the world in which that sector received the largest single allocation from the national budget. More girls than boys were enrolled in school, and up to 60 per cent of university graduates were women.

29. It was true that women and girls would sometimes file a complaint of rape or sexual harassment with the police only to withdraw it a few days later due to pressure from family members. Under new legislation, even if a complaint were withdrawn, the prosecution would proceed if there was overwhelming evidence to support the complaint. However, since evidence was often difficult to come by in such cases, the success of the new measures was uncertain. It was hoped that two important pieces of legislation due to be enacted later in 2016 — the Witness Protection Act and the Whistle-blowers Protection Act — would help to strengthen the position of complainants. Under the Labour Act of 2007, sexual harassment in both the public and private sectors was a criminal offence. However, the Government would consider the matter further in the light of the Committee's suggestions regarding compensation for victims. The authorities had appealed to NGOs and to society at large for suggestions regarding the content of new legislation on gender violence. Many excellent proposals had been received and were currently being examined.

30. Issues revolving around the number of women in high-level decision-making positions were likely to be resolved through education, especially in the light of the high percentage of female university graduates. The governing party had amended its internal regulations to make it obligatory for all leadership and decision-making positions within the party to be distributed equally between men and women. Thanks to those measures, currently 47 per cent of the Members of Parliament were women, as were the Prime Minister and the Deputy Prime Minister. The party's commitment to gender equality also extended to the local government level, where 48 per cent of all local authorities were women. It was now important to encourage other political parties to introduce a similar requirement of equal gender representation. The Office of the Prime Minister was working on a policy called the New Equitable Economic Empowerment Framework whereby the ownership of a certain percentage of private sector enterprises and assets would be allocated to previously disadvantaged persons, as defined in article 23 of the Constitution. That included women, both black and white, persons who had suffered oppression as a result of apartheid and persons with disabilities.

The meeting rose at 6 p.m.